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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/740,618

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James M. Barton

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EXAMINER

SHELEHEDA, JAMES R

ART UNIT

PAPER NUMBER

2623

MAIL DATE

DELIVERY MODE

05/08/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/740,618

Applicant(s)

BARTON, JAMES M.

Examiner

James Sheleheda

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 14 and 16-29 is/are pending in the application.
- 4a) Of the above claim(s) 4, 17 and 19-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 14, 16 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, consisting of claims 1-3, 14, 16 and 18 in the reply filed on 2/23/07 is acknowledged.

Claims drawn to Group II, consisting of claims 4, 17 and 19-29, are hereby withdrawn from consideration. Claims desired by applicant to be cancelled should be specifically listed as such in an amended claim listing in applicant's response.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-3, 14, 16 and 18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 14, 16 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Zigmond et al. (Zigmond) (6,698,020) (of record).

As to claim 1, Zigmond discloses a process for enhancing the viewership of television advertisements in a digital video recorder environment (Fig. 5, column 1, lines 23-43), comprising the steps of:

designating a beginning portion of a commercial break in a program segment (column 16, lines 30-43 and column 16, line 65-column 17, line 9);

wherein said beginning portion is of a particular length of time (wherein the user has a predetermined time to select an ad before a default is chosen; column 16, lines 30-43 and column 16, line 65-column 17, line 9);

wherein said beginning portion is authored to provide a teaser to entice a viewer to watch commercials during the commercial break (column 16, line 65-column 17, line 9) before the viewer causes the DVR to skip through the commercial break (provided at the initiation of the commercial break; column 16, lines 30-43 and column 16, line 65-column 17, line 9); and

wherein the DVR pauses playing the program segment after displaying the teaser (column 16, lines 30-43).

As to claim 2, Zigmond discloses wherein said teaser is a set of images that indicate a commercial relating to a particular advertisement is present (displaying of video images corresponding to the particular ad to allow the viewer to determine the ad of greatest interest; column 16, line 65-column 17, line 9).

As to claim 3, Zigmond discloses wherein said teaser is a short sequence of animations (column 16, line 65-column 17, line 9 and column 9, lines 9-20).

As to claim 14, Zigmond discloses wherein if said teaser is a menu (column 16, line 65-column 17, line 9), then the viewer is allowed to select a particular item via the menu (column 16, line 65-column 17, line 9).

As to claim 16, Zigmond discloses a process for enhancing the viewership of television advertisements in a digital video recorder environment (Fig. 5, column 1, lines 23-43), comprising the steps of:

designating a beginning portion of a commercial break in a program segment (column 16, lines 30-43 and column 16, line 65-column 17, line 9);

wherein the beginning portion is of a particular length of time (column 16, lines 30-43 and column 16, line 65-column 17, line 9);

wherein said beginning portion is authored to cause a DVR to display a menu to a viewer (column 16, line 65-column 17, line 9) before the viewer causes the DVR to skip through the commercial break (provided at the initiation of the commercial break; column 16, lines 30-43 and column 16, line 65-column 17, line 9);

wherein the DVR pauses playing the program segment after displaying the teaser (column 16, lines 30-43); and

wherein the viewer is allowed to select a particular item via the menu (column 16, line 65-column 17, line 9).

As to claim 18, Zigmond disclose wherein the teaser is a tag that triggers the DVR to display a menu (code pausing the program and initiating ad menu display; column 16, lines 30-43 and column 16, line 65-column 17, line 9).

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Art Unit: 2623

## Certificate of Mailing

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Signature: \_\_\_\_\_

Registration Number: \_\_\_\_\_

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Sheleheda whose telephone number is (571) 272-7357. The examiner can normally be reached on 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James Sheleheda  
Patent Examiner  
Art Unit 2623

JS

  
SCOTT E. BELIVEAU  
PRIMARY PATENT EXAMINER